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BLAKELY SOKOLOFF TAYOR & ZAFMAN
12400 WILSHIRE BOULEVARD, SEVENTH FLOOR
LOS ANGELES CA 90025

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AUG 09 2004

OFFICE OF PETITIONS

In re Application of	:
Lashkari et al.	:
Application No. 10/678,247	: DECISION DISMISSING
Filed: 3 October, 2003	: PETITION
Atty Docket No. 6655P003	:

This is a decision in reference to the paper filed on 10 June, 2004, which is treated as a petition, requesting that the above-identified application be accorded a filing date of 3 October, 2003, with Figure 7C described in the specification as a part of the original disclosure.

On 3 October, 2003, the application was filed.

Accordingly, on 29 December, 2003, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application stating, *inter alia*, that Figure 7C described in the specification (description and claims) appeared to have been omitted from the application. In response, on 29 March, 2004, petitioners filed a one month time extension, the oath or declaration, and a surcharge for its late filing. On 12 April, 2004 (certificate of mailing 8 April, 2004), petitioners filed a preliminary amendment containing Figure 7C.

Accordingly, on 9 April, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application, again stating that the application had been accorded a filing date of 3 October, 2003, but that Figure 7C described in the specification appeared to have been omitted.

In response, the present petition was filed on 10 June, 2004 (certificate of mailing date 8 June, 2004). Petitioners apparently request that the application be accorded a filing date of 3 October, 2003, with Figure 7C as a part of the original disclosure.

The petition is dismissed.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, however, petitioners neither assert that the missing page of specification was deposited on 3 October, 2003, nor request the 12 April, 2004 (the date the drawings were supplied), filing date. Instead, petitioners state that the omitted Figure does not contain any new matter.

As Figure 7C was not present on 3 October, 2003, the application cannot be accorded a filing date of 3 October, 2003, with Figure 7C as a part of the original disclosure. Still further, the question of new matter is not an issue here. Figure 7C simply was not filed in the USPTO on 3 October, 2003.

The preliminary amendment filed on 12 April, 2004, will be reviewed by the examiner for new matter.

The application will be processed using only the application papers present on filing. The copy of Figure 7C described in the specification filed on 12 April, 2004, will be reviewed with the preliminary amendment for new matter.

As this petition was necessitated by applicants' filing error rather than an error on the part of the Office, a petition fee of \$130.00 will be charged to counsel's deposit account, No. 02-2666, as authorized in the petition.

The application is being forwarded to Technology Center 2600 for examination in due course with a filing date of 3 October, 2003, using only the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.

A handwritten signature in cursive script, appearing to read "D Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions